



The International Business Practices Education Center

INTERNATIONAL BUSINESS NEGOTIATION AND CONTRACT

ENCYCLOPEDIA OF TERMS AND CONDITIONS

国際ビジネス実務教育センター



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Nishi-Shimbashi, Minato-ku, Tokyo, 105, Japan

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Published in Japan in 1982
by The International Business Practices Education Center

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PREFACE

Today's business can be characterized by its rapid internationalization and the complication of methods to materialize the targeted business.

As our world is shrinking more and more because of the rapid advancement of faster transportation and instant communications, foreign markets which used to be too far away because of distance are now nearby and easier to enter. Thus, the possibilities of developing international business are greatly broadened and varied.

Exporting and importing are still typical types of international business. However, in addition to these types of international business, various new business methods which are more sophisticated and complex have been introduced to increase profitability in foreign markets. Thus, your products can be made by a wholly-owned local company or joint venture company. Or, it could be a local company which you take over. For the production of your product, your technology can be licensed to the foreign business venture with adjustments for local user requirements. Of course, you may simply just want to license your technology to a foreign company where you can expect to receive a profit in the form of royalties without taking the risk of capital investment. In this case, you, as a licensor, may be requested to provide the licensee with technical assistance including training and education, engineering and management services. When you have sophisticated business know-how which is a complete system to enable others to successfully run a business, you may wish to franchise your know-how which is even a more profitable type of business.

The internationalization of business requires very high techniques and know-how in not only running the business, but also from planning the business to negotiating the contract and its performance. Between two countries, there may be few common business practices, laws, etc. These factors directly and indirectly affect the business venture, and are very crucial factors for the success of the business. The purpose of this book is to initiate you into the secrets of successful and profitable international business. In this book, you will find invaluable techniques and know-how for feasibility studies, contract negotiations, contract documentation, problem-solving, etc. And, these techniques and know-how have been proven effective in international business by well-known multinational corporations.

This book has been compiled not only for those lawyers practicing law in the international business field but also for businessmen engaged in such actual businesses. The book will also be useful for professors and students of international business courses. There have been many excellent law books which deal only with the legal aspects of international business and the same is true for business books which only treat the subject of business in the international field. However, both the legal and business aspects of international business are closely related and intermixed. Without a deep understanding of both subjects, the achievement of your international business goals will be difficult to realize. This book is designed to give you both the legal and business aspects of international business in a clear and concise form.

This book consists of two parts and most chapters are broken down by their type of business. If you want to obtain general understanding of international business or want to find one particular type of business that would be most suitable for your product or technology, it is recommended that in both cases you read through this book to achieve those purposes. Even if you have already decided the business arrangement for your product, technology, etc. you may wish to confirm that no other arrangement is better by referring to this book.

When a particular type of business is selected and you wish to know all the business know-how and information to carry out a feasibility study, negotiations, preparation of contract, and implementation of the business, you have only to look at the relevant section of each chapter. Even in this case, more information will be obtained by reading the sections of related or similar businesses. For instance, the section on Granting a Technical License is well supplemented by the section on Receiving a Technical License. The same is true for businesses such as: (Import-Export, Sales Agent) (Plant Export, Construction, Maintenance and Other Services) (Technical License, Joint Research and Development) (Franchise, Technical License) (Trademark License, Technical License, Export-Import). More than one type of business may be combined in one arrangement as an integral part of that business. Such arrangements are called "Complex Business" in this book. The typical combination is a technical license and joint venture, plant export or trademark license. Special explanations and discussions are given for such Complex Businesses.

A brief description of each chapter is given as follows:

CHAPTER I. "TYPES AND CHARACTERISTICS OF INTERNATIONAL BUSINESS":

The title of this chapter is self-explanatory. It gives basic information on each of the various types of business so that you may understand what they are and realize the characteristics of each type.

CHAPTER II. "BUSINESS QUESTIONNAIRES AND COMMENTS":

In this chapter, questions are followed by comments of why such questions should be asked and how the obtained information should be used in the next step towards success. The answers to these key and general questions will give you a very good idea of what type of partner you will be doing business with in the future. However, note that not all questions should be addressed to the party with whom you are negotiating but some questions should be asked only through third parties such as banks, customers, suppliers, etc.

CHAPTER III. "NEGOTIATION ITEMS: GENERAL PROVISIONS":

This chapter includes almost all general provisions which are necessary or useful for any business contracts. Helpful comments and explanations are given to assist you in determining which general provisions are most suitable for your intended business arrangement.

CHAPTER IV. "NEGOTIATION ITEMS: SPECIFIC PROVISIONS":

This chapter is the heart of the book. In this chapter, you will find what items should be considered and agreed upon with your business partner, together with many useful explanations, practical suggestions, and negotiation techniques. However, note that arrangements which are advantageous to one party are often disadvantageous to the other party.

CHAPTER V. "STEP-BY-STEP NEGOTIATION OF KEY TERMS AND CONDITIONS":

In this chapter, three different forms of contract provisions are given for each of the most important clauses in the different types of business arrangements. The three different forms of provisions are provided with the specific intention that they be used as the first, second, and third proposals to be made in a contract draft as the contract negotiations develop. However, note that provisions included in this chapter are suggested as standard forms and need to be modified or supplemented to reflect your actual business situation. For other provisions not provided in this chapter, see Part Two "STANDARD CLAUSES AND ALTERNATIVES FOR EACH TYPE OF CONTRACT."

CHAPTER VI. "SPECIAL TERMS AND CONDITIONS IN COMPLEX BUSINESS AGREEMENTS":

In this chapter, a variety of advantageous terms and conditions and their alternatives are provided for special clauses peculiar to complex business arrangements, with the reasons why such terms and conditions are advantageous and how they are to be determined.

CHAPTER VII. "PERSUASION TECHNIQUES FOR THE MOST CONTROVERSIAL TERMS AND CONDITIONS":

This chapter is the most unique part of this book as it gives the highly sophisticated negotiation techniques which were actually obtained through the real experiences of international business ventures. The most persuasive argument is the one that is beneficial not only to yourself but also to the other party in the contract. This strategy is well illustrated by royalty rate negotiations in a technical license contract in which a licensee could successfully argue that too high a royalty rate would prevent the success of the licensed business and reduce the total amount of royalties for the licensor. Upon understanding the persuasion know-how for issues discussed in this chapter, you

will be able to develop your own techniques for successful contract negotiations.

CHAPTER VIII. "EXECUTION OF THE CONTRACT":

The major objective of this chapter is to familiarize you with the documentation of contracts. Although this chapter deals only with the mechanics of the contract, it is most important that you properly document your contract to assure your rights and the other party's obligations.

CHAPTER IX. "PROBLEM SOLUTION AFTER EXECUTION OF THE CONTRACT":

This chapter deals with the kinds of problems which are most commonly experienced in connection with business contracts and its main objective is to prevent those problems by giving effective ways to prevent them. Therefore, it is highly recommended that this chapter be read before the negotiation and documentation of any contract.

PART TWO FORMS OF AGREEMENT "STANDARD CLAUSES AND ALTERNATIVES FOR EACH CONTRACT TYPE":

In this part, a variety of terms and conditions and alternatives for each contract are classified and arranged clause by clause, in the negotiation sequence. Thus, it will be easier for you to choose the correct clause and to draft a complete contract.

It is recommended that the legal discussions included in this book be confirmed by attorneys in the country or countries where you are planning to do business as relevant laws and regulations may have changed. Even in such a case, the legal discussions included here will be a great assistance in familiarizing yourself with the points that should be checked before entering into any type of foreign business.

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